

STATE OF SOUTH CAROLINA

(Caption of Case)

Happy Rabbit, LP on Behalf of Windridge
Townhomes

v.

Alpine Utilities, Inc.

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET
NUMBER: 2008 - 360 - S

(Please type or print)

Submitted by: Benjamin P. Mustian, Esquire

SC Bar Number: 68269

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Telephone: 252-3300

Columbia, SC 29202

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Other:

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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition

☐ Request for item to be placed on Commission's Agenda
expeditiously

☒ Other:

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)			
<input type="checkbox"/> Electric	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Letter	<input type="checkbox"/> Request	
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certification	
<input type="checkbox"/> Electric/Telecommunications	<input checked="" type="checkbox"/> Answer	<input checked="" type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigation	
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement	
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment	
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter	
<input type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response	
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery	
<input checked="" type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition	
<input type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation	
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena	
<input type="checkbox"/> Water	<input checked="" type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff	
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other: _____	
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest		
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit		
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report		

Print Form

Reset Form

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TRACEY C. GREEN
SPECIAL COUNSEL

*ALSO ADMITTED IN TX

October 24, 2008

VIA HAND-DELIVERY

The Honorable Charles L.A. Terreni
Chief Clerk/Administrator

Public Service Commission of South Carolina

101 Executive Center Drive

Columbia, South Carolina 29210

RECEIVED
OCT 24 11:00
PUBLIC SERVICE
COMMISSION

RE: Happy Rabbit, LP on behalf of Windridge Townhomes v. Alpine Utilities, Inc.;
Docket No. 2008-360-S

Dear Mr. Terreni:

Enclosed for filing on behalf of Alpine Utilities, Inc. are the original and one (1) copy of the Answer and Motion to Dismiss in the above-referenced matter. By copy of this letter, I am serving a copy of these documents upon the parties of record to this proceeding and enclose a Certificate of Service to that effect.

I would appreciate your acknowledging receipt of these documents by date-stamping the extra copies that are enclosed and returning the same to me via our courier.

If you have any questions, or if you need any additional information, please do not hesitate to contact me.

Sincerely,

WILLOUGHBY & HOEFER, P.A.



Benjamin P. Mustian

BPM/cf
Enclosures

The Honorable Charles L.A. Terreni

October 24, 2008

Page 2

cc: Nanette S. Edwards, Esquire
James C. Cook, Happy Rabbit, LP on behalf of Windridge Townhomes

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2008-360-S

IN RE:)
)
 Happy Rabbit, LP on behalf of Windridge,)
 Townhomes,)
)
 Complainant)
)
 v.)
)
 Alpine Utilities, Inc.,)
)
 Defendant.)
 _____)

ANSWER

RECEIVED
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 SOUTH CAROLINA
 PUBLIC SERVICE
 COMMISSION

Pursuant to Commission Regulations RR. 103-826 and 103-830, and in compliance with the Notice issued by the Commission's Chief Clerk and Administrator dated September 23, 2008, and incorporating all defenses heretofore raised by motion and reserving all defenses which may hereafter be raised by motion, Alpine Utilities, Inc. ("Alpine") answers the complaint of the Complainant above-named as follows:

FOR A FIRST DEFENSE

1. Alpine denies each and every allegation of the Complaint/Petition except as hereinafter admitted, modified or qualified.

FOR A SECOND DEFENSE

2. Each and every allegation of the foregoing paragraphs is incorporated herein as if repeated verbatim.

3. The Complaint is so vague and ambiguous that Alpine should not be reasonably required to frame a responsive pleading. However, and reserving Alpine's motion addressed to the certainty and sufficiency of the Complaint, Alpine denies the material allegations in the four unnumbered paragraphs of the Complaint and would show that Alpine has not improperly established and maintained its utility relationship with Happy Rabbit, L.P. or with "Windridge Townhomes."

FOR A THIRD AND AFFIRMATIVE DEFENSE

4. Each and every allegation of the foregoing paragraphs is incorporated herein as if repeated verbatim.

5. The Complaint fails to state facts sufficient to constitute a cause of action. The Complaint does not make any allegation specifying the nature of the facts or circumstances giving rise to the conclusory allegations set forth therein.

FOR A FOURTH AND AFFIRMATIVE DEFENSE

6. Each and every allegation of the foregoing paragraphs is incorporated herein as if repeated verbatim.

7. The Complaint does not sufficiently establish the basis for a complaint cognizable under the law or warrant a hearing. See S.C. Code Ann. § 58-5-270 (Supp.2007) and Commission Regulations RR. 103-819 and 824.

FOR A FIFTH AND AFFIRMATIVE DEFENSE

8. Each and every allegation of the foregoing paragraphs is incorporated herein as if repeated verbatim.

9. To the extent that Complainant is asserting its rights as an individual consumer, Complainant has failed to exhaust its prehearing remedies inasmuch as the matters complained of have not been mediated by the Office of Regulatory Staff as required by §58-5-270.

WHEREFORE, having fully set forth its Answer, Alpine requests that the Commission issue an order dismissing the Complaint and granting such other and further relief to Alpine as is just and proper.



John M.S. Hoefer

Benjamin P. Mustian

WILLOUGHBY & HOEFER, P.A.

Post Office Box 8416

Columbia, South Carolina 29202-8416

803-252-3300

Attorneys for Defendant

Columbia, South Carolina

This 24th day of October, 2008

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2008-360-S

RECEIVED
2008 SEP 24 11:23
PUBLIC SERVICE
COMMISSION

IN RE:)
)
Happy Rabbit, LP on behalf of Windridge,)
Townhomes,)
)
Complainant)
)
v.)
)
Alpine Utilities, Inc.,)
)
Defendant.)
_____)

**MOTION TO DISMISS AND FOR
IMPOSITION OF SANCTIONS OR
ALTERNATIVELY, FOR MORE
DEFINITE STATEMENT**

Pursuant to 26 S.C. Code Ann. Regs. R. 103-829 (Supp. 2007), Alpine Utilities, Inc. (“Alpine” or “the Company”) herein moves the Public Service Commission of South Carolina (“Commission”) to dismiss the above-captioned matter on the grounds that the “Complaint” dated September 15, 2008 filed in the above-referenced docket (1) would, if accepted as a pleading before the Commission, be filed in contravention of Commission regulations regarding representation and constitute the product of the unauthorized practice of law, (2) appears to assert matters relating to an action already pending in the circuit court in which jurisdiction has been asserted to be proper, (3) does not meet the Commission’s requirements for pleadings, (4) fails to state facts sufficient to constitute a basis for relief under pertinent law, and (5) fails to state facts supporting a request for a hearing. Alternatively, Alpine moves that the Commission require Complainant to amend its

“pleading” so as to make a more definite statement on the ground that same is so vague and ambiguous that the Company cannot reasonably be required to frame a responsive pleading. Further, Alpine submits that the Complaint constitutes a frivolous action pursuant to S.C. Code Ann. Section 15-36-10, *et seq.*, and requests that the Commission impose sanctions against Complainant and award attorneys’ fees to Alpine. In support of this motion, Alpine would respectfully show as follows:

I. BACKGROUND

On or about September 12, 2008, Happy Rabbit, a South Carolina Limited Partnership (“Happy Rabbit”) which owns and operates twenty-three duplex buildings containing a total of forty-six units, known as Windridge Townhomes (“Windridge”), commenced an action against Alpine in the Court of Common Pleas for Richland County in Civil Action No. 2008-CP-40-06619. Thereafter, on or about September 16, 2008, Mr. James C. Cook, as “General Partner” of Happy Rabbit, filed with the Commission a letter (“Complaint”) on behalf of Happy Rabbit, L.P. (“Happy Rabbit”) which has been assigned the above-referenced docket number. Happy Rabbit states in the Complaint that it is “the owner and operator of Windridge Townhomes” which “receives sewer services from Alpine Utilities, Inc.” Further, Happy Rabbit, asserts that “Alpine has improperly established and maintained its utility relationship with Windridge [sic]” and “requests a formal hearing so that Windridge’s concerns may be addressed by this Commission.” Moreover, the Complaint states that Happy Rabbit is “in the process of establishing an Escrow Account, in which Windridge’s monthly sewer charges will be placed, pending the outcome of this matter.” To date, Alpine has not received payment for sewer services rendered to Happy Rabbit during the months of

August, September and October and, after imposition of late fees, Happy Rabbit has an outstanding balance due Alpine of \$1,919.46.

II. VIOLATION OF R. 103-804.T AND UNAUTHORIZED PRACTICE OF LAW

The Complaint filed by Mr. Cook in this matter is improperly before the Commission as it is in contravention of Commission regulations pertaining to representation and is also the product of the unauthorized practice of law. As asserted therein, the Complaint was filed on behalf of Happy Rabbit by Mr. Cook in his capacity as a General Partner. The Company submits that Mr. Cook is not currently licensed as an attorney or otherwise authorized to practice law in South Carolina and, therefore, is unable to lawfully prepare and file pleadings on behalf of a legal entity such as Happy Rabbit.

Initially, Alpine notes that Commission Regulation 103-804.T permits persons to appear in a representative capacity only in the following instances:

- (a) An individual may represent himself or herself in any proceeding before the Commission.
- (b) An attorney authorized to practice law in the State of South Carolina may represent a party in any proceeding before the Commission.

Furthermore, in its Order No. 2003-550, dated September 8, 2003, in Docket No. 2003-162-T, the Commission held:

We agree with [Movant] that the Petitions to Intervene ... should be dismissed. The Petitions to Intervene were signed by persons who are not attorneys. The South Carolina Public Service Commission has not, by regulation, authorized persons not licensed to practice law in South Carolina, to appear and represent clients before the Commission. The “practice of law embraces the preparation of pleadings, and other papers incident to actions and special proceedings...” [citation omitted]. A pleading includes a “petition” as defined by 26 S.C. Code Ann. Regs. 103-804(F). Therefore,

Petitions to Intervene which are filed on behalf of someone other than an individual must be signed by an attorney.

The Commission has recently reiterated the limitations upon representation arising under this regulation. See, Order No. 2008-567, Docket No.2008-227-C, August 15, 2008.

The plain language of the Complaint indicates that Mr. Cook is not representing himself in this matter; rather the Complaint has been brought in the name of Happy Rabbit, a legally constituted limited partnership which exists as a separate legal entity. Counsel for Alpine have consulted the 2008-2009 Lawyers Deskbook published by the South Carolina Bar and have determined therefrom that Mr. Cook is a **retired** member of the Bar. This status does not, however, permit Mr. Cook to appear before the Commission in a representative capacity on behalf of Happy Rabbit. Rather, Rule 415 of the South Carolina Appellate Court Rules, as amended by Order of the Supreme Court of South Carolina, September 16, 2008, limits the ability of retired attorneys, who meet certain stringent criteria and have obtained a limited license from the South Carolina Supreme Court, to provide legal services only to clients approved to receive services from an approved legal services organization or the South Carolina Bar Pro Bono Program. Upon information and belief, Happy Rabbit is not a client approved to receive services from either of these entities. Therefore, Mr. Cook is not licensed to practice law in the State of South Carolina, on a limited basis or otherwise, and his appearance on behalf of Happy Rabbit in this matter is in direct contravention of the aforementioned Commission regulations and precedent.

It is also clear that if the Complaint is accepted as a pleading, then Mr. Cook's drafting and submission of same would constitute the unauthorized practice of law. South Carolina courts have long held that the preparation and filing of pleadings constitutes the practice of law. "The generally

understood definition of the practice of law embraces the preparation of pleadings, and other papers incident to actions and special proceedings, and the management of such actions and proceedings on behalf of clients before judges and courts.” Roberts v. LaConey, 375 S.C. 97, 103, 650 S.E.2d 474, 477 (2007) (*citing* Brown v. Coe, 365 S.C. 137, 139, 616 S.E.2d 705, 706-07 (2005) (emphasis supplied). See, In re Duncan, 83 S.C. 186, ___, 65 S.E. 210 (1909). Pursuant to the Commission’s Practice and Procedure Regulations, 26 S.C. Code Ann. Reg. R. 103-804(O) (Supp. 2007), a “pleading” is defined as a “document seeking relief in a proceeding before the Commission, including complaint, answer, application, protest, request, motion ... or petition.” (Emphasis supplied). Thus, Mr. Cook is by definition engaging in the practice of law, assuming his letter is recognized by the Commission to constitute a complaint. Accepting that assumption (but, see Section IV, *infra*), the issue then becomes whether Mr. Cook is authorized to engage in the practice of law. The Company submits that he is not.

As previously noted, Mr. Cook does not hold a license to practice law. Persons not licensed to practice law may represent themselves, but are prohibited from representing separate legal entities, such as corporations or partnerships¹, in legal matters except under certain circumstances.

A natural person may present his own case in court or elsewhere, although he is not a licensed lawyer. A corporation is not a natural person. It is an artificial entity created by law. Being an artificial entity it cannot appear or act in person. It must act in all its affairs through agents or representatives. In legal matters, it must act, if at all, through licensed attorneys.

¹ “A partnership is an entity which is separate and distinct from the persons who compose it.” Lane v. Krein, 297 S.C. 133, 134, 375 S.E.2d 351, 352 (S.C.App.,1988).

See State ex rel. Daniel v. Wells, 191 S.C. 468, ___, 5 S.E.2d 181, 186 (1939) *citing* Clark v. Austin, 340 Mo. 467, 101 S.W. 2d 977, 982 (1937) (emphasis supplied). More specifically, agents of separate legal entities who are not licensed as attorneys are not permitted to file a complaint on behalf of the entity.

Since a corporation cannot practice law, and can only act through the agency of natural persons, it follows that it can appear in court on its own behalf only through a licensed attorney. It cannot appear by an officer of the corporation who is not an attorney, and may not even file a complaint except by an attorney, whose authority to appear is presumed; in other words, a corporation cannot appear in propria persona.

State ex rel. Daniel v. Wells, *supra.* *citing* Mullin-Johnson Company v. Penn Mutual Life Insurance Company, 9 F. Supp. 175 (D.C. Cal. 1934) (emphasis supplied). The Supreme Court has since modified Wells to allow a business, such as Happy Rabbit, to be represented by a non-lawyer officer, agent or employee in civil magistrate's court proceedings. See In re Unauthorized Practice of Law Rules Proposed by the South Carolina Bar, 309 S.C. 304, 306, 422 S.E.2d 123, 124 (1992). This modification is inapplicable in the instant case, however, since the instant matter is not a civil magistrate's court proceeding.

Another circumstance where unlicensed persons may appear and represent clients is where the matter involves an agency which has adopted regulations authorizing same. In re Unauthorized Practice, *supra.* Any such proposed regulation must be submitted to the Supreme Court at the same time it is submitted to Legislative Council and may be declared unenforceable by the Supreme Court. Id. To date, this Commission has adopted no such regulation.²

² Alpine recognizes that, on or about June 13, 2008, the Commission filed proposed regulations with the South

Furthermore, in a separate docket, Happy Rabbit has affirmatively acknowledged that it is required to be represented by a licensed attorney in matters before the Commission. In its Response to Applicant's Answer in Opposition and Objection to Petition to Intervene and Clarification filed in Docket No. 2008-190-S on July 11, 2008, Happy Rabbit stated that "[Alpine] is correct that [Happy Rabbit] need[s] to be represented by South Carolina legal counsel..." Therefore, contrary to the position taken by Happy Rabbit in this regard before the Commission, Mr. Cook is again attempting to engage in the unauthorized practice of law. The Commission should not continue to sanction these prohibited actions and the Complaint should therefore be summarily dismissed.

III. CIRCUIT COURT PROCEEDING

Although it is unclear from the Complaint, Happy Rabbit may be attempting to raise before the Commission a matter that it has already raised in the Court of Common Pleas for Richland County in Civil Action No. 2008-CP-40-06619. As demonstrated in the complaint filed by Happy Rabbit in circuit court ("Circuit Court Complaint"), a copy of which is attached hereto and incorporated herein by reference as Exhibit "A", Happy Rabbit has asserted that Alpine has required Happy Rabbit to be responsible for payment of monthly sewer bills for the forty-six tenants of Windridge. Happy Rabbit further asserts that this requirement is in direct contravention of S.C. Code Ann. § 27-33-50 (1976, as amended), which provides "[u]nless otherwise agreed in writing, a tenant has sole financial responsibility for gas, electric, water, sewerage, or garbage services provided to the premises the tenant leases, and a landlord is not liable for a tenant's account." Without arguing the merits of the Circuit Court Complaint, and reserving its right to assert further

Carolina Legislative Council which, if approved, would amend the current restrictions on persons appearing in a representative capacity; however, upon information and belief, these proposed regulations have not yet become effective.

defenses in that matter, it is Alpine's belief that the Circuit Court Complaint is completely without merit and that the referenced statutory provision does not give rise to any claim against Alpine for a number of reasons.³

Moreover, Happy Rabbit clearly believes that the circuit court has jurisdiction over this matter inasmuch as it has asserted in its Circuit Court Complaint that the "actions complained about [therein] are in violation of South Carolina Statutes (*sic*) under the jurisdiction of [the circuit court]."

Alpine similarly asserts that any action arising under § 27-33-50 would not properly be before this Commission. It is a fundamental principle of administrative law that agencies have no powers other than those granted to them by the General Assembly. See Kiawah Property Owners Group v. Public Serv. Comm'n of S.C., 359 S.C. 105, 109, 597 S.E.2d 145, 147 (2004) ("The PSC is a government agency of limited power and jurisdiction, which is conferred either expressly or impliedly by the General Assembly."); City of Camden v. Public Serv. Comm'n of S.C., 283 S.C. 380, 382, 323 S.E.2d 519, 521 (1984) ("The Public Service Commission is a governmental body of limited power and jurisdiction, and has only such powers as are conferred upon it either expressly or by reasonably necessary implication by the General Assembly."). The Commission's enabling legislation does not

³ Contrary to Happy Rabbit's assertion in the Circuit Court Complaint, § 27-33-50 does not contain a blanket preclusion against a utility billing a landlord for monthly utility services provided to the landlord's tenants. To the contrary, the statute specifically states that a tenant is solely responsible for utility services unless there is an **agreement otherwise** in writing. In addition to rental agreements between tenants and landlords which may provide that the landlord is financially responsible for utility services, there can also be agreements between a landlord and a utility whereby the landlord has undertaken to be financially responsible for such services.

Such is the case between Alpine and Happy Rabbit. In 1984, TFB Construction Company ("TFB"), the original owner and developer of Windridge, entered into a billing arrangement with Alpine, a copy of which is attached hereto as Exhibit B, whereby TFB desired to obtain sewer service to the property, agreed to take service from Alpine, and agreed to pay Alpine for these services. Happy Rabbit, as the current owner of this property, is a successor in interest to this agreement and is, therefore, subject to its terms. Therefore, contrary to the assertions made in the Circuit Court Complaint, Happy Rabbit, as successor in interest to TFB, has agreed in writing to be financially responsible for the sewer services provided to Windridge. To the extent that the instant Complaint is an attempt to raise these same issues in a collateral proceeding before the Commission, Happy Rabbit's assertions lack a basis in law or in fact and do not give

grant it the authority to enforce disputes arising under Title 27 of the South Carolina Code; rather, the Commission is charged with the supervision and regulation of rates and services of public utilities (See S.C. Code Ann. § 58-5-210 (Supp. 2007)) neither of which are the subject of the Circuit Court Complaint and neither of which are asserted in the instant Complaint. It is a fundamental principle of administrative law that agencies have no powers other than those granted to them by the General Assembly. See Kiawah Property Owners Group v. Public Serv. Comm'n of S.C., 359 S.C. 105, 109, 597 S.E.2d 145, 147 (2004) (“The PSC is a government agency of limited power and jurisdiction, which is conferred either expressly or impliedly by the General Assembly.”); City of Camden v. Public Serv. Comm'n of S.C., 283 S.C. 380, 382, 323 S.E.2d 519, 521 (1984) (“The Public Service Commission is a governmental body of limited power and jurisdiction, and has only such powers as are conferred upon it either expressly or by reasonably necessary implication by the General Assembly.”). Similarly, the Commission and the circuit court do not enjoy concurrent jurisdiction. Cf. S.C. Code Ann. §58-5-270 (Supp. 2007). Based on the foregoing, the Complaint should be dismissed as not constituting a matter cognizable by the Commission under law.

IV. THE PLEADING FAILS TO SATISFY RR. 103-819 AND 824 AND IS TOO VAGUE AND AMBIGUOUS FOR A RESPONSE

Commission Regulation 103-819 requires that pleadings include “[a] concise and cogent statement of the facts [a complainant] is prepared to present to the Commission” and “[a] statement identifying the specific relief sought” by a complainant. Similarly, Commission Regulation 103-824 requires that a complaint contain “[a] concise and cogent statement of the factual situation surrounding the complaint” and “a concise statement of the nature of the relief sought.” In the absence of facts alleged to support the complaint, Alpine is not capable of complying with its

rise to any claim that is cognizable by the Commission.

obligations under Commission Regulation 103-826 to answer in a manner which will “admit or deny, specifically and in detail, each material allegation.” In the absence of a request for specific relief, the Commission cannot determine whether the complaint seeks relief within the authority of the Commission to grant and Alpine cannot respond in a manner consistent with its obligations under R. 103-826. The Complaint does not comply with the requirements of the Commission’s regulations pertaining to pleadings and complaints and should therefore be dismissed without more. Alternatively, Happy Rabbit should be required to amend the Complaint, so as to comply with RR. 103-819 and 824 and make a more definite statement within fifteen (15) days after an order to that effect is issued by the Commission, or have its pleading struck. *Cf.* S.C. Code Ann. §1-23-320(b)(4) (2005) and Rule 12(e), SCRCP.

**V. THE PLEADING FAILS TO STATE FACTS SUFFICIENT
TO CONSTITUTE A COMPLAINT/PETITION UNDER §58-5-270**

Even if the Complaint satisfies the aforementioned requirements for pleadings before this Commission (which is disputed), it nonetheless fails to state facts sufficient to constitute a complaint cognizable under §58-5-270. Nowhere in the Complaint is alleged any **fact** to support the conclusory allegations made by Happy Rabbit. The Complaint should therefore be dismissed. *Cf.* Rule 12(b)(6)(SCRCP).⁴

**VI. THE COMPLAINT FAILS TO
SUPPORT A REQUEST FOR A HEARING**

“The purpose of a pleading is to put the adversary on notice as to the issues involved.” Burns v. Wannamaker, 286 S.C. 336, 339, 333 S.E.2d 358,360 (Ct. App. 1985). The Complaint is legally

⁴ Alpine notes that the Complaint has not been verified. 26 S.C. Code Ann. Regs. R. 103-822 requires a complaint to include a “verification under oath ... if facts are alleged to be true within the knowledge of the person filing the pleading.” The fact that the Complaint contains no verification substantiates Alpine’s assertion that the pleading fails

insufficient and so deficiently drawn that it fails to support the request for a hearing. For example, the Complaint alleges that “Alpine has improperly established and maintained its utility relationship with Windridge.” No factual or legal basis, however, is alleged in support of this allegation. Rather than meeting the notice requirement, the Complaint requests that this Commission schedule a hearing to proceed merely upon a bald assertion relating to a “utility relationship.” This sole allegation set forth in the Complaint is not supported by any facts which require a hearing by the Commission to be determined.⁵ Because the Complaint is so defectively drawn, Alpine asserts that the Commission should decline to hear it.

VII. FRIVOLOUS PROCEEDING

Alpine asserts that, in light of the foregoing, the present action is a frivolous proceeding in that the Complaint is baseless in fact and appears to assert matters which have already been raised in another forum in which Happy Rabbit has asserted jurisdiction is vested. Inasmuch as that action is still ongoing, Alpine asserts that this Complaint has been filed with the Commission purely to interpose delay and to restrict Alpine’s authority and right to disconnect Happy Rabbit for non-payment of its bill. Alpine, therefore, asserts that the Commission should summarily dismiss this complaint and sanction Mr. Cook and Happy Rabbit by awarding Alpine its costs and attorneys’ fees incurred in defending this groundless action.

Rule 11(a), SCRCP, states that every pleading must be signed by the party or its attorney which constitutes a certificate that the person has read the pleading, that to the best of his knowledge,

to allege facts sufficient to constitute a complaint cognizable under §58-5-270.

⁵ The fact that the Complaint/Petition contains no verification also substantiates Alpine’s assertion in this regard.

information and belief there is good ground to support it, and that the pleading is not interposed for delay. Additionally, 26 S.C. Code Ann. Regs. R. 103-822 states:

All pleadings filed with the Commission shall be signed. The signature of the person, or its authorized representative, submitting the pleading, shall constitute an admission that such person or representative has read the pleading and knows the contents thereof, and, if the signatory is acting in a representative capacity, that such signatory has the capacity and authority specified therein.

Further, S.C. Code Ann. Section 15-36-10(A)(3) states:

The signature of an attorney or a pro se litigant constitutes a certificate to the court that:

- (a) the person has read the document;
- (b) a reasonable attorney in the same circumstances would believe that under the facts his claim or defense may be warranted under the existing law or, if his claim or defense is not warranted under the existing law, a good faith argument exists for the extension, modification, or reversal of existing law;
- (c) a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of a civil cause is not intended merely to harass or injure the other party; and
- (d) a reasonable attorney in the same circumstances would believe his claim or defense is not frivolous, interposed for delay, or brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based.

Alpine asserts that, in light of the ongoing proceeding regarding the Circuit Court Complaint, the language and issues contained in the Complaint clearly demonstrate that Happy Rabbit and Mr. Cook, acting as its representative in this matter, did not read the Complaint prior to filing. For example, the Complaint alleges that Alpine has “improperly established and maintained its utility relationship with Windridge” but fails to supply the Commission or the Company with any assertions of fact or documentation supporting such a claim. Additionally, the Complaint claims that Happy

Rabbit is “in the process of establishing an Escrow Account, in which Windridge’s monthly sewer charges will be placed, pending the outcome of this matter.” Given the fact that no citation to authority which allows a sewer customer to take such an action (which action Alpine submits is unsupported and unauthorized by Commission regulation), the instant Complaint fails to assert any cause of action or to provide facts sufficient upon which a claim may be brought. Alpine submits that the lack of specificity in this regard is evidence that Happy Rabbit has brought this complaint solely in an attempt to prevent Alpine from disconnecting sewer service for Happy Rabbit’s failure to remit payment while this matter is pending.⁶

S.C. Code Ann. Section 15-36-10(B)(2) states “the court, upon its own motion or motion of a party, may impose upon the person in violation any sanction which the court considers just, equitable, and proper under the circumstances.” Further, Section 15-36-10(G)(1) provides that sanctions may include “an order for the party represented by an attorney or pro se litigant to pay the reasonable costs and attorney’s fees of the prevailing party.” Alpine believes that the Commission should sanction Happy Rabbit and Mr. Cook in his capacity as General Partner for filing this baseless and unsubstantiated complaint. The language of the Complaint clearly demonstrates that Mr. Cook has failed to comply with the rules of this Commission setting forth the necessary information to be included in a complaint. Furthermore, Mr. Cook has instigated this matter without providing proper notice as to the substance of his allegations. Finally, Mr. Cook will have been engaged in the unauthorized practice of law if the Complaint is accepted by the Commission as a pleading. Alpine therefore asserts that a reasonable attorney would not believe that the claims asserted in the Complaint are warranted.

⁶ Commission Regulation 103-538.B. which provides “[sewer s]ervice shall not be discontinued if the


Such accusations, while frivolous and unsupported by evidence, often lead to proceedings which are complex and time consuming and require the Company to invest a great deal of money to defend against accusations that are unsupported by any evidence. Allowing Mr. Cook and Happy Rabbit to pursue baseless and unsubstantiated matters in contravention of Commission rules and regulation will only cause the Company to incur additional expense which will result in increased rates for all of Alpine's customers. The Complaint has no basis in law or fact, is totally without merit, and simply wastes the Company's and the Commission's time. Moreover, it is an attempt to use the Commission's complaint process as a coercive weapon and such actions should not only be prohibited, they should also be punished. Therefore, Alpine moves that the Commission dismiss this Complaint as being frivolous, sanction Mr. Cook and Happy Rabbit for bringing a frivolous complaint, and award Alpine costs and attorneys fees incurred for defending this action.

VIII. CONCLUSION

For the foregoing reasons, Defendant respectfully requests that Complainant's Complaint be dismissed as it is the product of the unauthorized practice of law, is not within the proper jurisdiction of the Commission, the assertions contained therein are frivolous, and it is defectively drawn. Further, Alpine requests that the Commission sanction Complainant and award attorneys' fees to the Defendant pursuant to S.C. Code Ann. Section 15-36-10, *et seq.* In the alternative, Defendant requests that the Commission require the Complainant to amend the Complaint so as to make a more definite statement.

[SIGNATURE PAGE FOLLOWS]

complainant requests in writing a hearing before the commission."



John M.S. Hofer

Benjamin P. Mustian

WILLOUGHBY & HOEFER, P.A.

Post Office Box 8416

Columbia, South Carolina 29202-8416

803-252-3300

Attorneys for Defendant/Respondent

Columbia, South Carolina

This 24th day of October, 2008

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE CIRCUIT COURT FOR THE
FIFTH JUDICIAL CIRCUIT

CASE NO.: 08-C/A-40-

Happy Rabbit, a South Carolina Limited
Partnership and Carolyn D. Cook,
Plaintiffs,

v.

Alpine Utilities, Inc.,

Defendant.

**COMPLAINT
(JURY TRIAL DEMANDED)**

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Plaintiffs, Happy Rabbit, a South Carolina Limited Partnership (hereinafter, "Plaintiff Happy Rabbit") and Carolyn D. Cook (hereinafter, "Plaintiff Cook"), complaining of the Defendant, would allege and show unto the Court as follows:

JURISDICTION

1. Upon information and belief Defendant, Alpine Utilities, Inc., (hereinafter, "Alpine") is a utility incorporated under the laws of the state of South Carolina, with its principal place of business located in Richland County, South Carolina and currently conducting business in Richland County, South Carolina.

2. Plaintiff Happy Rabbit is the owner and operator of Windridge Townhomes, located in the 3300 block of Kay Street in Columbia, South Carolina (Richland County) (hereinafter, "Windridge") and Plaintiff Cook is a General Partner of Happy Rabbit.

3. The acts complained about herein occurred in Richland County, South Carolina.

4. The acts complained about herein are in violation of South Carolina Statutes under the jurisdiction of this court.

5. Therefore, jurisdiction and venue in this Court is proper

**COURSE AND PATTERN OF DEALINGS
BETWEEN THE PARTIES**

6. Paragraphs one through five above, are re-alleged.

7. Happy Rabbit is the owner and operator of Windridge Townhomes, located in the 3300 block of Kay Street in Columbia, South Carolina (Richland County) and has been so since December

29, 2005, until the date of these presents. Prior to that date, ownership of Windridge was with Plaintiff Cook, namely through December 28, 2005.

8. Plaintiff Cook and later Plaintiff Happy Rabbit, entered into a utility customer relationship with Alpine for the provision of sewer services to Windridge. The utility required Plaintiff Cook and continues to require Plaintiff Happy Rabbit to enter into a business relationship, whereby Plaintiffs were responsible for payment of monthly sewer bills for the forty-six tenancies in the twenty-three duplex apartment buildings. Furthermore, Plaintiffs paid a definite monetary sum to Defendant Alpine on a monthly basis for a period exceeding three years, and therefore Plaintiffs' damages are ascertainable.

9. Alpine insisted and continues to insist that Plaintiffs be responsible for the sewer accounts for all tenants located in Windridge. Plaintiffs protested that such an arrangement was improper, but Alpine refused to change the character of sewer services to Windridge and required and continues to require Plaintiff Happy Rabbit to be responsible for the same. Defendant Alpine's actions, in requiring Plaintiffs to be responsible for its tenant's sewer services were unfair and deceptive.

FOR A FIRST CAUSE OF ACTION AGAINST ALPINE
(VIOLATION OF § 27-33-50)
(S.C. CODE OF LAWS ANN., (1976, AS AMENDED))

10. Paragraphs one through nine above, are re-alleged.

11. (§ 27-33-50, S.C. CODE OF LAWS ANN., (1976, AS AMENDED)) Reads in pertinent part as follows:

(A) Unless otherwise agreed in writing, a tenant has sole financial responsibility for gas, electric, water, sewerage, or garbage services provided to the premises the tenant leases, and a landlord is not liable for a tenant's account.

12. Defendant's actions, in requiring the Plaintiffs to be responsible for the sewer services of their forty-six tenancies (twenty-three duplex buildings), is in direct contravention of § 27-33-50, S.C. CODE OF LAWS ANN., (1976, AS AMENDED) and affected trade and commerce within the state of South Carolina.

FOR A SECOND CAUSE OF ACTION AGAINST ALPINE
(VIOLATION OF SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT.)
(§ 39-5-10 et seq., S.C. CODE OF LAWS ANN., (1976, AS AMENDED))

13. Paragraphs one through twelve above, are re-alleged.

14. Defendant Alpine's actions described above, are in clear violation of the statute set forth hereinabove in detail.

15. Defendant Alpine's actions described above, are an unlawful trade practice such that: (i) the Plaintiffs both suffered actual and clearly ascertainable damages (ii) there is an adverse impact on the public interest (iii) Defendant Alpine's actions are offensive to public policy, unethical, unfair, deceptive, and oppressive and (iv) are unfair trade practices capable of repetition.

DEMAND FOR JURY TRIAL

16. Paragraphs one through fifteen are re-alleged.

17. Plaintiffs demand that this matter be heard before a trial jury.

PRAYER FOR DAMAGES

WHEREFORE,

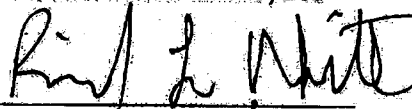
Plaintiffs are entitled to damages and a Judgment as follows:

FOR A FIRST CAUSE OF ACTION against Defendant Alpine, Plaintiffs are entitled to recover Twenty Two Thousand Three Hundred and Fifty Six Dollars (\$22,356) and a finding that, as a matter of law and under the facts of this case, Defendant Alpine cannot require Plaintiff Happy Rabbit to be responsible for sewer services provided to its tenants.

FOR A SECOND CAUSE OF ACTION against Defendant Alpine, Plaintiffs are entitled to recover Sixty Seven Thousand and Sixty Eight Dollars (\$67,068) plus the recovery of a reasonable Attorney's fees and the costs incurred in this Action.

FOR SUCH OTHER AND FURTHER RELIEF AS THIS COURT MAY DEEM JUST AND REASONABLE.

Respectfully Submitted,
AUSTIN & ROGERS, PA



Richard L. Whitt
508 Hampton Street, Suite 300
Columbia, South Carolina 29201
(803) 256-7442
Attorney for Plaintiffs

September 12, 2008
Columbia, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

SEWER UTILITY SERVICE AGREEMENT

THIS AGREEMENT entered into this 23rd day of July, 1984 by and between ALPINE UTILITIES INC., hereinafter known as the "Utility", and TFB CONSTRUCTION COMPANY, ^{for Complex Partnership, A General Partnership} hereinafter known as the "Developer"

WITNESSETH:

WHEREAS, the Developer plans to construct the Windridge Duplex Development, consisting of a total of forty-six (46) units, to be located on the eastern side of Kay Street, north of St. Andrews Road, in Richland County, State of South Carolina, and the Developer is desirous of securing sewer service to this project; and,

WHEREAS, the Utility has certain sewerage facilities which it will make available to the Developer, its successors and assigns;

NOW THEREFORE, in consideration of the agreements contained herein, the Utility, its successors and assigns hereby agrees:

1. To reserve and to provide in perpetuity, except as hereinafter set forth, sewer service sufficient and adequate to meet the needs of the forty-six (46) units to be constructed by the Developer.

2. To obtain the approval of such state agencies as required in regard to the furnishing of these services and the setting of these rates, including the South Carolina Department of Health and Environmental Control and the South Carolina Public Service Commission.

The Developer agrees:

1. That it will continue to take service from the Utility as long as the Utility remains approved to render such service by the South Carolina Department of Health and Environmental Control.

2. That it will pay to the Utility a sewer tap fee of Eleven Thousand, Five Hundred (\$11,500.00) Dollars, the receipt of which is hereby acknowledged at the signing of this Agreement.

3. That it will, at its own cost, bring its service pipe to the nearest Alpine outfall line.

4. That it will pay to the Utility a monthly sewer service charge of Three Hundred Seventy-nine and 50/100 (\$379.50) Dollars, said service charge to be payable no later than the tenth day of the month in which due. It is the responsibility of the Developer to notify the Utility when to commence monthly service charges.

IT IS MUTUALLY UNDERSTOOD AND AGREED that the sewer tap fee and the monthly sewer service charge quoted herein are for the forty-six (46) units only and any change in the use of the buildings or additions to the original structures shall require a requisite sewer tap fee and monthly service charge to be paid in accordance with Alpine's approved schedule of charges, as set forth by the South Carolina Public Service Commission.

THIS AGREEMENT shall enure to the benefit of the successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF the parties hereto have set their hands and seals the day and year first above written.

WITNESSES:

Louise C. Wynn

Louise C. Wynn

ALPINE UTILITIES, INC.

BY: _____

J. Donald Dial, President

TFB CONSTRUCTION COMPANY
For ~~COMPLEX PARTNERSHIP~~, A General Partnership

BY: _____

Taylor F. Boyd
Its Managing Partner

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

VERIFICATION

PERSONALLY APPEARED BEFORE ME ROBIN DIAL, who being first duly sworn and deposes says as follows:

That he is the President and General Manager of Alpine Utilities, Inc.;

That he has read the foregoing Motion to Dismiss and for Imposition of Sanctions or Alternatively, for More Definite Statement and is familiar with the matters described therein;

That the facts stated in such document are true as to his knowledge, except as to those matters stated on information and belief, and as to those he believes them to be true.

Robin Dial

SWORN TO before me this
24th day of October, 2008

Shallan H. Moseley (L.S.)
Notary Public for South Carolina

My Commission Expires: Nov 5, 2017

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2008-360-S

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COMMISSION

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Happy Rabbit, LP on behalf of Windridge,)
Townhomes,)
Complainant)
v.)
Alpine Utilities, Inc.,)
Defendant.)
_____)

CERTIFICATE OF SERVICE

This is to certify that I have caused to be served this day one (1) copy of Respondent's **Answer and Motion to Dismiss** by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

Nanette S. Edwards, Esquire
Office of Regulatory Staff
Post Office Box 11263
Columbia, South Carolina 29211

James C. Cook
608 Southlake Road
Columbia, South Carolina 29223



Clark Fancher

Columbia, South Carolina
This 24th day of October, 2008.